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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DAVID J. LOLA,

Plaintiff and Respondent,

v.

JEFFERY JONES,

Defendant and Appellant.

D073991

(San Diego County Super. Ct.
No. 37-2009-00097850-CU-BC-CTL)

APPEAL from a postjudgment order of the Superior Court of San Diego County,
Judith F. Hayes, Judge. Affirmed.

Jeffery Jones, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This case turns on the distinction between void and voidable judgments. Two judgments were entered in December 2010. A December 7 stipulated judgment required Jeffery and Elsie Ann Jones (the Joneses) to pay their former attorney David J. Lola \$20,000, plus up to \$7,500 in attorney's fees and costs "incurred" in enforcing that

stipulated judgment. Two weeks later, a December 22 judgment required the Joneses to pay \$27,540, consisting of \$7,500 in attorney's fees and \$40 in costs. After seven years passed, the Joneses filed an ex parte motion to determine which of the two judgments was correct. The court concluded the December 22 judgment superseded the first but struck the \$40 cost award to revise the total nunc pro tunc to \$27,500.

On appeal, the Joneses argue that the *December 7* judgment controls. They contend the December 22 judgment was void because: (1) it was entered without proper notice to them, and (2) nothing in the record suggests Lola incurred \$7,500 in attorney's fees to enforce the stipulated judgment. As we explain, the record shows the Joneses received proper notice, and any failure to follow procedural requirements in adding \$7,500 for attorney's fees at most rendered the December 22 judgment *voidable*. Because the time to challenge a 2010 judgment on that basis has long since expired (Code Civ. Proc., § 473, subd. (b)), we affirm the postjudgment order.¹

FACTUAL AND PROCEDURAL BACKGROUND

David J. Lola represented Jeffery and Elsie Jones in their foreclosure lawsuit. A dispute arose as to payment for legal services. Lola sued the Joneses in 2009, claiming they owed him \$198,000 in unpaid fees.

In September 2010, the parties signed a stipulated settlement agreement requiring that the Joneses pay Lola \$20,000 "within Thirty (30) days of the entry of this Stipulated Judgment, or prior to December 1, 2010." The stipulation further provided that "[s]hould

¹ Further statutory references are to the Code of Civil Procedure.

Defendants fail to pay this sum of money, Defendants will be additionally liable for all attorney fees and costs up to the amount of \$7,500 . . . incurred by Plaintiff in enforcing this Stipulated Judgment." As Jeffery would later explain, this language memorialized the parties' phone call. Jeffery believed the parties were settling for \$20,000. Receiving an unsigned stipulation for \$27,500, he called Lola's attorney for clarification. Lola's counsel agreed that Jeffery could handwrite the terms as transcribed above.

9 3. Defendants shall pay Plaintiff the amount of ~~Twenty-Six Thousand Five Hundred~~
 10 Dollars and Zero Cents (~~\$26,500.00~~) within Thirty (30) days of the entry of this Stipulated Judgment, *or prior*
 11 *\$20,000* in settlement of the claims set forth in the Complaint filed in this action. Should Defendants fail to *1, 2010*
 12 pay this sum of money, Defendants will *additionally* be liable for all attorney fees and costs *up to the amount of \$7,500*
 13 in enforcing this Stipulated Judgment. *SEVEN THOUSAND FIVE HUNDRED DOLLARS*
 14

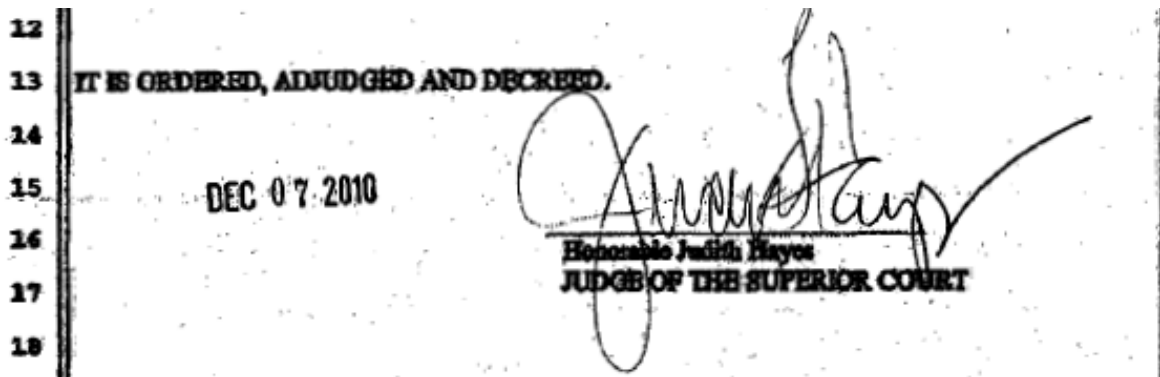
The Joneses tried to tender payment before December 1 but were unable to secure funding.

On December 6, Lola filed an ex parte motion for entry of judgment. His declaration represented that the Joneses had agreed to pay \$20,000 "on or before December 1, 2010."² Because Lola had not received payment, he sought entry of

² The stipulated settlement was entered upon filing on December 7, 2010. Based on its plain language, the Joneses were required to pay \$20,000 within 30 days of that date *or* before December 1. Given that no payment was made for seven years, the Joneses do not contend that the December 22, 2010 judgment was void because the settlement still left two weeks to make the payment.

judgment pursuant to the terms of the stipulation. (§ 664.6.)³ Exhibit A to his motion was the stipulated settlement. Exhibit B was a judicial council form requesting judgment of \$27,540 (consisting of \$7,500 in attorney's fees and \$40 in costs).

The Joneses were served a copy of Lola's motion by mail, with delivery confirmation. In his later declaration, Jeffery explained that he and his wife "declined" an invitation to attend the hearing on December 7, believing the court would enter judgment of \$20,000. At the December 7 hearing, Judge Hayes granted Lola's motion and signed the submitted stipulated judgment.



Lola recorded a lien on the Joneses' property on December 17.

On December 22, another court officer signed the judicial council form attached as Exhibit B to Lola's motion, entering the requested judgment of \$27,540.

³ Section 664.6 provides in relevant part: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement."

6. Amount.

a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$20,000.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input checked="" type="checkbox"/> Attorney fees	\$7,500.00
(4) <input checked="" type="checkbox"/> Costs	\$40.00
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$27540.00

b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
☐ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$


7. ☐ Other (specify):

Date: 12-22-10

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input type="checkbox"/> Damages	\$
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$
(3) <input type="checkbox"/> Attorney fees	\$
(4) <input type="checkbox"/> Costs	\$
(5) <input type="checkbox"/> Other (specify):	\$
(6) TOTAL	\$

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

☐  JEFFREY B. BARTON
 JUDICIAL OFFICER

The December 22 judgment was not recorded until 2012.

Several more years passed. Lola assigned the judgment to attorney Christian McLaughlin, who petitioned in 2016 for renewal of the judgment. The Joneses closed a loan in May 2017, from which McLaughlin recovered \$47,324 (including postjudgment costs and interest). The Joneses were unable to secure financing sooner.

In January 2018, the Joneses filed a motion in pro per "to determine which of the two competing judgments entered in this case is the correct one – and to reverse the effects of the judgment entered in error." Describing the error as "clerical," the Joneses claimed they had agreed to settle with Lola for \$20,000, not \$27,540. They asked the court to require McLaughlin to remit the funds he had collected in excess of that amount, further arguing statutory interest could not accrue "during the time that the judgment was neither effective nor payable due to a second judgment having been entered and recorded."

McLaughlin did not respond to the Joneses' motion, informing Jeffery by e-mail that he had closed the file after receiving payment and that Jeffery's issues appeared to concern Lola. In February 2018, the Joneses appeared before Judge Hayes, who granted the motion in part. The court concluded the December 22 judgment superseded the December 7 judgment, and struck the \$40 cost award to amend the total nunc pro tunc to \$27,500.⁴

DISCUSSION

The Joneses argue the trial court erred by vacating the correct judgment—the one entered on December 7, 2010—instead of the erroneous one entered on December 22, 2010. They claim the December 22 judgment was *void* for two reasons. First, it "varied from the material terms of the Stipulated Judgment entered on December 7, 2010." Although the stipulation allowed Lola to recover attorney's fees and costs up to \$7,500, that was "*only as it relates to his collection efforts* on the \$20,000 judgment." (Italics added.) There was nothing in the record to suggest that Lola incurred any attorney's fees or costs in such collection efforts between December 7 and December 22. In addition, the Joneses contend the December 22 judgment was void because it was "obtained without notice."

⁴ The stipulated settlement authorized a judgment of up to \$27,500, including costs and attorney's fees incurred in enforcement. The December 22 judgment was for \$27,540. "[T]o the extent the judgment failed to conform to the terms of the settlement agreement, the trial court retained the inherent power to correct the judgment at any time nunc pro tunc." (*Ames v. Paley* (2001) 89 Cal.App.4th 668, 670.)

We deal with the latter claim first, as our record squarely refutes it. Lola served the Joneses with a copy of his ex parte motion by mail and e-mail. The December 22 judgment now challenged by the Joneses is simply a signed copy of the judicial council form attached as Exhibit B to Lola's motion. Jeffery stated in his declaration that he knew about the December 7 hearing but "declined" to go, believing the court would enter a judgment of \$20,000. There is, accordingly, no support for the notion that the December 22 judgment was somehow "obtained without notice" to the Joneses.

We instead focus on the Joneses' main point, that the December 22 judgment was void absent any indication that Lola incurred \$7,500 in enforcing the \$20,000 judgment. As we explain, this error at most makes the judgment *voidable*, not void, a conclusion dispositive of the Joneses' appeal.

As a general matter, "jurisdictional errors can be of two types. A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power, rendering the judgment voidable." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56 (*Goddard*)). "A judgment is void to the extent it provides relief 'which a court under no circumstances has any authority to grant.' " (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 1004, 1009; *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339 (*Kabran*) [a lack of fundamental jurisdiction means a complete absence of power to decide the matter based on lack of jurisdiction over the subject matter or the parties].)

But "most procedural errors are not jurisdictional" in the fundamental sense. (*Goddard, supra*, 33 Cal.4th at p. 56.) "Once a court has established its power to hear a

case, it may make errors with respect to areas of procedure, pleading, evidence, and substantive law" without opening the judgment or order to collateral attack. (*Ibid.*) Fundamental jurisdiction implies power to decide a question correctly *and* incorrectly. (*Ibid.*) Thus, an insufficiency of the evidence, abuse of discretion, or mistake of law do not implicate a court's fundamental jurisdiction. (*Ibid.*) When a court having fundamental jurisdiction violates procedural requirements, orders relief that is unauthorized by statute or common law, or otherwise fails to conduct itself in the manner prescribed by law, it acts " 'in excess of jurisdiction,' " making the resulting judgment merely voidable. (*Kabran, supra*, 2 Cal.5th at pp. 339–340.)

Here, there is no dispute the court had subject matter jurisdiction and personal jurisdiction over Lola and the Joneses in the pending fee litigation. Although the Joneses contend otherwise, the record shows they further received notice of Lola's request to include \$7,500 in attorney's fees in the judgment. There is also no dispute that the stipulated settlement authorized a judgment of \$27,500, *provided* the court found that Lola incurred \$7,500 in attorney's fees and costs in collecting on the \$20,000 judgment. The dispute instead centers on the court's alleged failure to perform an essential procedural step and evaluate that Lola *indeed* incurred \$7,500 in enforcing the judgment.

By not considering evidence on this matter, the court arguably bypassed an essential procedural step. This error resulted in an implied finding—that Lola incurred \$7,500 in attorney's fees—perhaps not supported by substantial evidence. But even if we accept this premise, it shows a quintessential act in excess of the court's jurisdiction,

rather than an act exceeding its *fundamental* jurisdiction. (*Kabran, supra*, 2 Cal.5th at pp. 339–340; *Goddard, supra*, 33 Cal.4th at p. 56.)

"Because a court that acts in excess of jurisdiction still has 'jurisdiction over the subject matter and the parties in the fundamental sense' [citation], any such act is 'valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time' [citation]." (*Kabran, supra*, 2 Cal.5th at p. 340.) Section 473, subdivision (b) requires set aside motions of this nature to be filed within six months of the judgment. The deadline is mandatory; "a court has no authority to grant relief under [section 473, subdivision (b)], unless an application is made within the six-month period." (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 340.) Having brought their motion over seven *years* after entry of the December 22 judgment, the Joneses long ago missed their window to assert this claim.

While recognizing the general rule that most procedural errors render a judgment voidable, the Joneses maintain that the December 22 judgment is *void* because the court lacked power "to alter the material terms agreed to and stipulated by the parties, and confirmed by the court two weeks prior." As a rule, when entering judgment pursuant to a stipulated settlement (§ 664.6), a court may interpret the terms and receive evidence to determine disputed facts, but it may not modify material terms. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 983–984; see *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1374–1375 [trial court had no power to modify stipulated attorney's fees and costs].) Here, the plain language of the stipulated settlement allowed the court to enter a judgment of up to \$27,500 provided certain

findings were made as to the attorney's fees and costs incurred. Although the court arguably missed a necessary procedural step, any failure to receive evidence did not *modify* a material term. At most, it rendered the court's implied finding unsupported by the evidence, an error that does not implicate a court's fundamental jurisdiction. (*Goddard, supra*, 33 Cal.4th at p. 56.)

In short, the alleged procedural error identified by the Joneses rendered the December 22 judgment voidable, not void. We accordingly do not reach their request to reverse the claimed adverse effects of a void judgment. As the Joneses assert no other basis to challenge the February 2018 postjudgment order, we affirm.

DISPOSITION

The order is affirmed. Appellant shall bear his own costs on appeal.

DATO, J.

WE CONCUR:

AARON, Acting P. J.

IRION, J.